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IN THE

Supreme Court of the United States

1940 TERM

No. 530

CHARLES RICHMAN, *Petitioner,*

vs.

ANNE NIELSEN, *as* Administratrix of the Estate of Pearl G. Nielsen, Deceased, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PETITION

Charles Richman, the Petitioner above named, prays that a Writ of Certiorari issue to review the Judgment of the United States Circuit Court of Appeals for the Eighth Circuit entered August 26, 1940, in the case of Anne Nielsen, as Administratrix of the Estate of Pearl G. Nielsen, Deceased, Appellant, vs. Charles Richman, Appellee, and which Judgment reversed the Judgment of the United States District Court for the District of South Dakota, Southern Division, the Judgment of said District Court being in favor of the Petitioner and against the Respondent.

OPINION BELOW

The Circuit Court of Appeals by its decision reversed the said Judgment of the said District Court, and remanded the said case for a new trial in the said District Court. The decision and Judgment of the said Circuit Court of Appeals was on the merits and final so far as concerns said United States Circuit Court of Appeals, except that Petitioner herein duly made application for a rehearing, which application for a rehearing was denied by said United States Circuit Court of Appeals on September 18, 1940, whereby said proceedings in said United States Circuit Court of Appeals have been terminated, and nothing remains to be done in said United States Circuit Court of Appeals.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240a of the Judicial Code, as amended by the Act of February 13, 1925, being Section 347 (a) of Title 28 of United States Code Annotated.

The Judgment sought to be reversed was entered in said Circuit Court of Appeals on August 26, 1940.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Respondent brought this action to recover $10,000.00 alleged damages for the death of Respondent's intestate, Pearl G. Nielsen. The suit was under the South Dakota Wrongful Death Statute, now Chapter 37.22 of the South Dakota Code of 1939, formerly Sections 2929 to 2932 of the South Dakota Revised Code of 1919.

Respondent claimed, in substance, that her intestate was killed in a collision between two automobiles which occurred at a highway intersection near Colman, Moody County, South Dakota, January 13, 1939. Her Complaint charged that such collision and the death of her intestate were caused by negligence of the Petitioner. Petitioner's defense was a denial of negligence on his part, and a plea of contributory negligence on the part of Respondent's intestate.

Upon the trial in the United States District Court the jury was directed by the Court to return a verdict for the Petitioner, this being on the ground that the evidence showed contributory negligence of Respondent's intestate as a matter of law.

On Respondent's appeal to the said United States Circuit Court of Appeals, this decision was reversed, it being held that the question of contributory negligence was for the jury, and further that the facts were such that the case should have been submitted to the jury under the doctrine of the last clear chance.

The opinion was by a divided Court, Circuit Judge Thomas concurring with District Judge Bell in the majority opinion, and Circuit Judge Woodrough dissenting.

QUESTIONS PRESENTED

I.

Whether under the applicable law of South Dakota, being what is commonly known as the Uniform Motor Vehicles Act, a motorist entering from a crossroad into what is known as an arterial highway, has the right-of-way over a motorist approaching on the arterial highway from his left.

II.

Whether such a motorist, entering such an arterial highway, has complied with his statutory duty to stop when he stops at the so-called stop sign, and when the situation is such that an observation from that point would be entirely ineffective, or whether the statutory duty under provisions of the Uniform Motor Vehicles Act is to stop at a point where a reasonably effective observation can be made.

III.

Whether such a motorist, entering such an arterial highway, has complied with his duty to exercise due care when on his only observation of traffic he miscalculates the time when an approaching vehicle will arrive, or whether he should make further observations immediately before entering the zone of danger.

IV.

Whether the doctrine of the last clear chance, as stated by the Circuit Court of Appeals in its decision herein, is not at variance with such doctrine as established by decisions of the South Dakota Supreme Court.

REASONS FOR GRANTING THE WRIT

The applicable statutory law is what is known as the Uniform Motor Vehicles Act. As the accident involved in this case occurred January 13, 1939, the South Dakota Code of 1939 had not then become effective. Such Code in Section 65.0202 (26) provided that the effective date was July 1, 1939. Therefore citations as to statutory law are as the same existed at the time of the accident involved. The statute in question was Chapter 251 of the South Dakota Session Laws of 1929. This is the so-called Uniform Motor Vehicles Act. (See Section 70, Chapter 251, South Dakota Session Laws of 1929, and Uniform Laws Annotated, Volume 11, Pages 8 to 73.)

This Act provides in Section 69 thereof, as adopted by the South Dakota Legislature: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." This same provision appears as Section 90 of the Uniform Act as proposed for general adoption. (11 Uniform Laws Annotated, Page 73)

This Act having received widespread adoption, and the manifest purpose thereof being uniformity of traffic regulations so motorists do not confront varying laws every time a state line is passed, it is highly important that erroneous construction of the statutory provisions should not be promulgated by the Federal Courts. It is further highly important that the Federal Courts should not be at variance with the local construction of the law in any state which has adopted the Uniform Act. Such Law is one that effects all motorists in their conduct upon highways and it is decidedly to the public interest that provisions of the Uniform Act should be correctly construed, and construed

in accordance with the prevailing interpretation thereof, particularly the probable construction by the Courts of the jurisdiction where the controversy originated.

In the present case it is our contention:

I.

The holding of the Circuit Court of Appeals construes the provisions of the Act with reference to arterial highways to the effect that regardless of the arterial character of the highway, a motorist entering the same from a crossroad has the right-of-way over a motorist approaching on the arterial highway from his left. This is completely at variance with the popular conception of an arterial highway and its purposes. It seems to be at variance with the conception thereof of the South Dakota Supreme Court as stated in *Miller v. Stevens*, 63 S. D. 10, 256 N. W. 152.

In view of the widespread establishment of arterial highways under the provisions of the Uniform Motor Vehicles Act, and in view of the "Uniformity of Interpretation" provision of the Act, this construction of the law by the Circuit Court of Appeals, if erroneous, should be corrected.

II.

Section 22 of Chapter 251 of the South Dakota Session Laws of 1929 provides for designation of arterial highways by erecting stop signs, and that "it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto."

The opinion of the Circuit Court of Appeals dealt with a situation where the arterial highway was paved, and where the stop sign, due to presence of filling stations, was eighty-six feet north of the north line of the highway, and one hundred and nine feet north of the north edge of the paving, and where it was conceded a motorist would have practically no view of the arterial highway to the east. It was undisputed that the only stop made by Respondent's decedent was at the stop sign. The Circuit Court of Appeals construes the law to the effect that such a stop meets the requirement of the statute, regardless of the fact no effective observation could be there made. This is at complete

variance with decisions of State Courts construing the same or analogous statutes. The well established rule is that the stop must be made at a point where the motorist can make effective observations.

Findley v. Brittenham, 199 Minn. 197, 271 N. W. 449;
Gumm v. Koepke (Wis. State Report not available) 278 N. W. 447.
Hittle v. Jones, 217 Ia. 598, 250 N. W. 689.
Marciniak v. Sundeen, 278 Mich. 407, 270 N. W. 729.
Miller v. Stevens, 63 S. D. 10, 256 N. W. 152.
Paluczak v. Jones, 209 Wis. 640, 245 N. W. 655.
Pettera v. Collins, 203 Wis. 81, 233 N. W. 545.
Pulford v. Mouw, 279 Mich. 376, 272 N. W. 713.
Shoniker v. English, 254 Mich. 76, 235 N. W. 866.
Svenson v. Vondrak, 200 Wis. 312, 227 N. W. 240.
Wood v. Branning, 215 Ia. 59, 244 N. W. 658.

III.

The opinion of the Circuit Court of Appeals is in substance that Respondent's decedent could be excused from looking eastward at any time within the last twenty feet before she drove upon the paving on the hypothesis that she might have seen Petitioner's vehicle at such a distance that it would not, if traveling at a lawful rate of speed, constitute a source of danger, and that she would thereby be excused for not making an observation immediately before going on the paving. This is at complete variance with decisions of the South Dakota Supreme Court which establish in that jurisdiction the duty of a motorist approaching an intersection, and which hold in substance that in such circumstances a final observation should be made before the motorist commits himself to the zone of danger.

Jamieson v. Gerth, 61 S. D. 514, 249 N. W. 921.
Anderson v. Huntwork (not yet in South Dakota Report), 284 N. W. 775.

The decision of the Circuit Court of Appeals being in clear conflict with the decisions of the South Dakota Su-

preme Court in this respect, the decision of the Circuit Court of Appeals should be corrected.

IV.

The opinion of the Circuit Court of Appeals adopted a view of the doctrine of last clear chance that is at manifest variance with the doctrine as followed by the South Dakota Supreme Court, and as followed by previous decisions of such Circuit Court of Appeals.

DeNoma vs. Sioux Falls Traction System, 39 S. D. 10, 162 N. W. 746.

McFarland v. Chicago, M. & St. P. Ry. Co., 51 S. D. 85, 212 N. W. 493.

Miller v. Sioux Falls Traction System, 44 S. D. 405, 184 N. W. 233.

Denver City Tramway Company v. Cobb, 164 Fed. 41.

Walker v. East St. Louis Street Railway Company, 25 Fed. (2) 579.

Wheelock v. Clay, 13 Fed. (2) 972.

V.

The opinion in this case was by a divided Court. One Circuit Judge was for reversal of the decision of the District Court and one was for affirmance of the decision of the District Court. The District Judge sitting favored reversal. Therefore, the net effect is that the ruling of one District Judge is overruled by the views of another District Judge, and important principles of law construing the Uniform Motor Vehicles Act are thereby promulgated. This in and of itself constitutes strong reason for granting certiorari. *Forsyth v. City of Hammond*, 166 U. S. 506, 17 S. Ct. Rep. 665.

WHEREFORE, it is respectfully submitted that this Petition for Writ of Certiorari to review the Judgment of the Circuit Court of Appeals for the Eighth Circuit should be granted.

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